

REMARKS

In response to the Office Action dated February 10, 2005, claims 1, 4, 5, 9, 12, and 18 have been amended and claims 2, 10, and 11 have been canceled. Claims 1, 3-9 and 12-20 are in the case. The Applicants respectfully request reexamination and reconsideration of the present application.

Record is made of a telephonic phone call by Applicants' attorney Edmond A. DeFrank to Examiner K Teska. The February 10, 2005 Office Action was discussed. Examiner Teska noted that the Examiner of record, E. Otero, was no longer employed by the USPTO. In addition, the Examiner agreed that the Office Action sent by Otero was overly critical. Edmond DeFrank argued that many of the rejection arguments (over sixty) were unfounded, duplicative and not supported by US statutes and case law. Examiner Teska recommended that the Applicant collectively respond in large groups (four) to Examiner Otero's arguments instead of responding to each and every detailed argument (over sixty). Thus, the below response reflects the discussion between Examiner Teska and Edmond DeFrank.

On pages 2-3, sections 8-13 of the Office Action, the Examiner attempted to redefine terms already defined by the Applicants. Although the Examiner cited computer dictionaries, the Examiner is reminded that the Applicants are entitled to be their own lexicographer. Specifically, one court stated "...we have repeatedly said, a patentee can be his own lexicographer provided the patentee's definition, to the extent it differs from the conventional definition, is clearly set forth in the specification."

Beachcombers Int'l, Inc. v. Wildewood Creative Prods., Inc., 31 USPQ 2d 1653, 1656 (Fed. Cir. 1994). As such, since the Examiner cannot force his self-imposed definitions (sections 8-13) on the Applicant, any rejections in proceeding sections that are based on the Examiner's definitions in sections 8-13 that are inconsistent with the specification are not valid. United States v. Telecommunications, Inc., 8 USPQ 2d 1217, 1220 (Fed. Cir. 1988), *cert. denied*, 490 U.S. 1046 (1989).

On pages 3-4, sections 14-30 of the Office Action, the Examiner rejected the drawings and specification as containing inconsistencies, and claims 1-20 under 35 USC § 112, first paragraph, as containing non-enabling subject matter.

In response, the Applicants traverse these objections and rejections.

When rejecting the claims under 35 USC § 112, first paragraph, the Examiner stated that the "...same terms appear to have different meanings throughout the application." In response, the Applicants submit that the specification is enabling because it contains similar terms that are shown in **alternative embodiments** throughout the specification. The alternative embodiments reflect different embodiments, which sometimes creates different functions and interactions, which is clearly acceptable under 35 USC § 112, first paragraph. Therefore, drawing changes are NOT required.

Namely, the Applicants submit that the drawings and specification do not contain inconsistent reference numerals to the same elements, but instead the drawings and specification show the elements in alternative embodiments. For example, regarding sections 20-24 of the Office Action, the unified diagnostics platform 130 of FIG. 1 is illustrated as a high level implementation, while the unified diagnostics platform 500 of FIG. 5 described in paragraphs [0041-0044] of the present patent publication (US 2003/0014618) are illustrated as a more detailed alternative embodiment and not inconsistencies.

Regarding sections 25-30 of the Office Action, elements 110, 120, 130, 140, and 150 of FIG. 1 are illustrated as a high level implementation, while elements 500, 505, 210, 520, 525, 535, 540, 545, 550, and 560 of FIG. 5 described in paragraphs [0041-0044] of the present patent publication (US 2003/0014618) are illustrated as a more detailed alternative embodiment, not inconsistencies. Thus, since the alternative embodiment of FIG. 5 represents a different embodiment from FIG. 1, different references numerals were used, which is acceptable within the patent laws. Micro Chem., Inc. v. Great Plains Chem. Co., 52 USPQ 2d 1258, 1264 (Fed. Cir. 1999). In addition, paragraph [0042] of the specification has been amended to clarify that the test groups can be defined inside (FIG. 1) or outside (FIG. 5) the unified diagnostics platform, depending on the embodiment and specific implementation.

Further, the claims have been amended and now contain additional features that clarify the invention.

Next, on page 7, sections 31-39 of the Office Action, the Examiner rejected claims 1-20 under 35 U.S.C. § 112, second paragraph.

In response, the Applicants submit that the terms used in the claims are definite because they are clearly defined by the specification. In addition, the claims have been amended and now contain additional features that clarify the invention.

On pages 8-10, sections 40-54 of the Office Action, the Examiner rejected claims 1-9, and 13-16 under 35 U.S.C. § 102(b) as allegedly being anticipated by Habeck (U.S. Patent No. 5,684,789). In addition, on pages 10-12, sections 55-66, the Examiner rejected claims 10-12, and 17-20 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Habeck in view of Figart (U.S. Patent No. 4,165,443).

The Applicants respectfully traverse these rejections. Namely, Habeck, alone (with regard to the rejection under 35 U.S.C. § 102(b)) or in combination with Figart (with regard to the rejection under 35 U.S.C. § 103(a)), fail to disclose all of the Applicants' newly claimed elements. In particular, these references, alone or in combination, fail to disclose the claimed connecting an external input system to the computer devices, providing an external output system that allows connection of the computer product to be evaluated, creating a connection with at least one switching multiplexor between the computer devices and the computer product based on a selection, creating multiple combinations and configurations of computer processors, operating systems, computer peripherals and computer products to be evaluated of the switching multiplexor with a plurality of switches allowing, communicating a controller with the switching multiplexor for providing selection control as to which combination and configuration of computer devices connected to the unified diagnostics platform are selected, creating a hardware and a software selector of the controller with a physical control that includes both human intervention and computer control for controlling the selection control and creating a multi-way, multi-function switch that facilitates the multiple connection combinations, wherein the desired computer system is generated by connecting a plurality of computer devices to the unified diagnostics platform.

As such, since Habeck fail to disclose all of the elements of the Applicants' newly amended claims, the rejection under 35 U.S.C. § 102(b) is moot. Moreover, since the combined references fail to disclose all of the elements of the Applicants' newly amended claims, this rejection under 35 U.S.C. § 103(a) is moot. Thus, the Applicants respectfully submit that the rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) should be withdrawn.

Further, with regard to the dependent claims, since they depend from the above-argued respective independent claims, they are therefore patentable on the same basis. (MPEP § 2143.03). Also, the other prior art references cited by the Examiner also have been considered by the Applicants in requesting allowance of the dependant claims and none have been found to teach or suggest the Applicants' claimed invention.

In view of the arguments and amendments set forth above, the Applicants respectfully submit that the claims of the subject application are in immediate condition for allowance. Thus, it is respectfully requested that all of the claims be allowed based on the amendments and arguments. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. Additionally, in an effort to further the prosecution of the subject application, the Applicants kindly request the Examiner to telephone the Applicants' attorney at (818) 885-1575.

Respectfully submitted,
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